

OWNER-ARCHITECT AGREEMENT

AGREEMENT MADE AND ENTERED INTO as of _____ day of _____, 20____, by and between SHELBY COUNTY GOVERNMENT ON BEHALF OF THE JUVENILE COURT OF MEMPHIS AND SHELBY COUNTY (hereinafter referred to as "Owner") and _____ (hereinafter referred to as "Architect") for the project described on Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter referred to as the "Project") and made a part of the terms and conditions of this agreement.

The address of Owner is: Shelby County Government, 160 N. Main, Memphis, Tennessee 38103

The address of Architect is: _____

The Project is: _____

FOR AND IN CONSIDERATION OF the covenants and conditions herein contained, the receipt and sufficiency of which is hereby acknowledged by and between the parties hereto, Architect and Owner agree as follows:

ARTICLE I

BASIC AGREEMENTS

- 1.1 Architect's Services. The Architect is experienced in the design and preparation of construction documents and the administration of the entire process of development of same as they apply to the Project. The Architect will prepare plans, specifications and drawings for the Project. The Architect shall perform its duties in conjunction and harmony with the Contractor and any Owner's Representative employed by Owner (hereinafter referred to respectively as "Contractor and any Owner's Representative") and shall provide all professional services for the Project in accordance with the terms and conditions of this Agreement.
- 1.2 Compensation. The Owner shall compensate the Architect for the services to be performed in accordance with the terms and conditions of this Agreement as follows:
 - A. For basic services, as described in Section 2.1 through 2.6 inclusive hereof, the sum of _____ and ___/100 (\$_____) DOLLARS. In no event shall the fee for such basic services described in Section 2.1 through 2.6 exceed the sum of \$_____. This is a fixed fee based on the established scope and budget. The fee is subject to change only upon negotiations and written agreement of the parties.

- B. For services described in Section 2.7 hereof, and for such additional services as Owner elects Architect to perform as indicated in Section 2.8 hereof, compensation shall be computed at rates and for the duration reflected in Exhibit "B", which is incorporated herein by reference.

1.3 Reimbursable Expenses. The Owner shall, in addition to the amounts described in Paragraphs A and B of Section 1.2 reimburse the Architect for the following and only the following costs and expenses as set forth in Paragraph A of this Section 1.3 in an amount not to exceed _____ AND ___/100 (\$_____) DOLLARS. All other costs, expenses or charges, including, but not limited to, all compensation and benefits paid to Architect's employees, incurred by the Architect in connection with the Project, shall be paid by the Architect without reimbursement from the Owner. Reimbursable expenses are defined as follows:

- A. Reimbursable Expenses are in addition to the compensation for Basic and Additional Services and include reasonable actual expenditures made by the Architect and the Architect's employees and Consultants in furtherance of the Project and are as follows:

1. Expense of data processing, Computer aided design, and drafting (CAD) and photographic production techniques when used in connection with additional Services.
2. Expense of reproductions, postage and handling of working drawings and specifications. Expenses of printing services shall be reimbursable by Owner only in the event Owner has specifically authorized same in advance.
3. Expense of renderings, models and/or work-ups requested by the Owner, for the Owner's use.
4. Other expenses specifically authorized in writing by Owner in advance of any such expenditure.

Records of all reimbursable expenses and for all services performed on the basis of flat rates as herein provided shall be kept on a generally recognized accounting basis and shall be available to the Owner or its authorized representative during business hours at Architect's office, and copies thereof shall be made and presented to Owner at its request. Except for invoices submitted for payment, Owner shall pay a reasonable charge for additional copies of records for reimbursable expenses requested by Owner. Architect shall be entitled to a ten percent (10%) mark-up on expenses subject to this Paragraph 1.3.

1.4 Payment. Payment of the compensation set forth herein shall be made to Architect as follows:

- A. Payments of the compensation set forth in Section 1.2A hereof shall be made monthly in proportion to services performed so that the accumulated total compensation at the completion of each phase, excluding compensation paid for additional services, or reimbursable, expenses, shall equal the following amounts:

Schematic Design Phase	(____%)
Design Development Phase	(____%)
Construction Documents Phase	(____%)
Bidding Phase	(____%)
Construction Administration Phase	(____%)
	(100%)

- B. All payments for services of the Architect shall be made monthly upon presentation of the Architect's statement of services rendered with sufficient supporting data acceptable to Owner.
- C. Invoices shall be submitted by the twenty-fifth (25th) day of each month and will be paid by the fifteen (15th) day of the following month.

1.5 Budget. The Owner and Architect agree in accordance with the Terms and Conditions of this Agreement that:

- A. The construction budget for this project is a total of _____ and ____/100 (\$_____) DOLLARS (hereinafter referred to as "Budget Amount") which is to include all hard costs and expenses of any nature required directly or indirectly to furnish the project to the Owner complete and sufficient for Owner to operate the facility for the use and in the manner intended but excludes costs of financing, furniture, fixtures and equipment. Owner's administrative expenses, legal and accounting fees of Owner, the Fees payable to Architect hereunder advertising costs, costs of consultants retained by Owner, and Owner's overhead and management expenses. The Budget Amount is contained on the attached Exhibit "C", which is incorporated herein by reference.
- B. Architect and its consultants shall use their best efforts to control the design and drawing development so as to achieve compliance within the Budget Amount upon the initial design configuration and without subsequent need for substantial revision, and/or rebidding of the working drawings. The Owner agrees to provide to the Architect timely information regarding the amount of the budget and the Owner's design criteria.

1.6 Consultants. The Architect shall retain, as a part of its basic services, at his sole expense, full service professional consultants who will be considered the agents of the Consultant for the purposes of Section 5.1 hereinafter set forth for the following services:

<u>Professional Category</u>	<u>Firm to be Retained</u>
A. Mechanical Engineering	
B. Electrical Engineering	
C. Structural Engineering	

The retention of the aforesaid consultants shall not diminish or reduce the obligations and duties of the Architect hereunder.

- 1.7 Supervisor. An officer of the Architect will represent his firm in all matters of coordination, decision and policy pertaining to Architect's Work under this Agreement. It is acknowledged that said individual shall not be removed from the Project without prior written notification from Architect to Owner, and the Owner's consent to said removal shall not be unreasonably withheld provided said individual may be removed from the Project and replaced at the written request of Owner. Any replacement of said individual shall be subject to Owner's prior written approval and Owner shall be permitted to terminate this Agreement in the event a satisfactory replacement is not immediately available without penalty.
- 1.8 Time. The Architect shall complete each phase of its work required by this Agreement in a timely fashion and Architect agree that time is of the essence in the performance of this agreement.

ARTICLE II

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

- 2.1 Basic Services
- A. The Architect's basic services consists of the services described herein or logically inferable from the Agreement, the Engineering and other services described in Section 1.6 hereof and any other services normally performed by an Architect employed to design and administer a Project of this nature.
- B. The scope of Architect's basic services are to also include those services not described that are reasonable consistent with and are necessary for a facility of this nature which is complete and functioning. All of Architect's services and documents shall fully embrace the restrictions and requirements of all governmental and quasi-governmental authorities, utility companies, fire underwriters, public authority and other agencies and organizations having jurisdiction over this Project in force as of the date that the building permit for the

Project is issued known to Architect or which in the exercise of Architect's best professional judgement should have been known to Architect.

- C. Furnish Owner such copies as Owner reasonably requests of the documents prepared pursuant to this Section 2.2.

2.2 Schematic Design Phase. During the Schematic Design Phase, the Architect shall:

- A. Review the project plan furnished by the Owner and upon architectural and engineering analysis of Owner's requirements as to access, zoning, building code requirements, physical characteristics of the Site, traffic and utility requirements and other information and applicable laws, statutes, ordinances and regulations in order to ascertain the requirements of the Project and confirm such requirements to Owner.
- B. Based on the mutually agreed upon program and Budget Amount, prepare a preliminary study and report illustrating the scale and relationship of all components of the Project and possible future development of the Site, and outline the nature of the structure, exterior and basic building systems which shall consist of suitable schematic drawings layouts, concept drawings, preliminary site plans and floor plans.
- C. Furnish Owner such copies as Owner reasonably requests of the documents prepared pursuant to this Section 2.2.

2.3 Design Development Phase. Upon receipt of Owner's written authorization to implement the documents presented in the Schematic Design Phase and to proceed with the Design Development Phase, the Architect shall:

- A. Prepare from the approved Schematic Design Studies, the Design Development Documents consisting of design criteria, drawings, outline specifications and other documents to establish, and describe size and character of the Project described by this Agreement as well as the structural, mechanical and electrical systems project materials and such other essentials as may be appropriate and submit these documents for approval by Owner. The Design Development Documents shall be prepared for consultation with Owner. Owner's Representative, and such consultants retained by Owner for the Project regarding furniture, fixture, equipment, lighting and acoustics, and such other components of the Project as requested by Owner.
- B. Cooperate with the Owner and its consultants to develop and update Budget Breakdown to indicate compliance with the Budget. Amount through completion of the Design Development Finance.
- C. Furnish Owner such copies as the Owner reasonably requests of the documents prepared pursuant to this Section 2.3.

2.4 Construction Documents Phase. Upon receipt of Owner's written authorization to implement the documents presented by the Design Development Phase and to proceed with the Construction Document Phase, the Architect shall:

- A. Prepare, from the approved Design Development Documents, drawings and specifications in collaboration with the Owner's Representative setting forth in detail, the requirements for the construction of the entire Project including drawings, technical specifications and necessary bidding information, and submit those documents for approval by Owner. Architect shall cooperate with the Owner and the Owner's Representative in the preparation of bidding forms, Instructions to Bidders, and all Conditions of the Contract so as to design the Project to meet the goals herein set forth and take advantage of all reasonable cost-saving suggestions.
- B. Along with the Construction Documents, revise and review a final updated budget breakdown to show continued compliance with the Budget Amount. The Architect shall certify to Owner that in its best professional judgement, the design documents will result in a responsive bid that is within the Budget Amount.
- C. The Architect shall assist the Owner in the filing of the required documents for the approval of governmental authorities having jurisdiction over the Project and shall be responsible for revising the drawings if necessary for such approval. All costs resulting from any such required revision are to be within the amount as set forth in Section 1.2 hereof.
- D. Furnish the Owner such copies as Owner reasonably requests of the documents prepared pursuant to this Section 2.4.
- E. Prior to the commencement of construction, Architect shall certify to the best of his knowledge to Owner that all plans, specifications and drawings conform to all applicable governmental regulations, statutes and ordinances and the improvements when built in accordance therewith.
- F. Architect shall be responsible for insuring that all project drawings and specifications coordinate with the plans and specifications for all consultants.

2.5 Bidding or Negotiation Phase. The Architect, following the Owner's approval of the Construction Documents, the latest updated budget breakdown and the list bidders, shall assist the Owner in analyzing bids and bid proposals.

2.6 Construction Phase – Administration of the Construction Contract. Upon the award of the Construction Contract, the Construction Phase of this Agreement will commence.

- A. The Architect, as a representative of the Owner during the Construction Phase, shall advise and consult with the Owner and Contractor. The Architect shall

provide administration of the contract for construction as set forth herein and in the Shelby County General Conditions of the contract for construction, a copy of same being attached hereto as Exhibit D and incorporated herein by reference as if same were set forth verbatim.

- B. The Architect shall make periodic visits to the Site and/or as directed by Owner, to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as an Architect, he shall endeavor to guard the Owner against defects and deficiencies in the Work and shall notify Owner and Contractor in writing if any portion of Work is found not be in conformity with the requirements of the Construction Documents and make recommendations to the Owner for the Corrections. Architect and his consultants shall be available and consult with Owner and Contractor on any occasion during the course of the construction which would make such consolation necessary.
- C. The Architect shall issue to Owner a Certificate upon receipt from Contractor for Payment each month. The approval of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's reasonable professional judgement that the Work has progressed to the point indicated; that the quality of the Work is in accordance with the Contract Documents and that the Contractor is entitled to payment to the amount certified.
- D. The Architect shall advise Owner to reject Work observed by the Architect which does not conform to the Contract Documents. Whenever reasonable judgement would indicate a probability of a non-conforming or adverse circumstance, and in order to insure the proper implementation of the intent of the Contract Documents, Architect will advise Owner to require special inspection or testing of any Work in accordance with the provision of the Contract Documents whether or not such Work has been then fabricated, installed or completed.
- E. The Architect shall review and approve within a reasonable time a after submittal to Architect, all shop drawings, samples and submissions of the Contractor for conformance with the design concept of the Project, for compliance with the information given in the Contract Documents, for compatibility with adjacent and contiguous work, systems and services with limitations of space, weight and services.
- F. The Architect shall prepare change orders for Owner's approval, if authorized by Owner.
- G. The Architect shall conduct visits to the site to determine the completion of the Work and shall receive and review written guarantees, manufacturer's manuals, parts lists and all documents assembled by the Contractor for the Project. Upon request of Owner, but not before, Architect shall issue a Certificate of Substantial Completion.

- H. If the lowest reasonable bid amount received by the Owner exceeds the Budget Amount by more than ten percent (10%), Architect shall revise the Construction Documents, at the Architect's sole expense, and perform all other services again as necessary to finally result in a Project Cost that is within the Budget Amount. The Owner may select to proceed with construction at the bid price. If Owner elects to proceed at price over the Budget Amount, the Architect fee will not be increased.
- I. Architect shall assist Owner, as requested, in selection of finish materials and colors, excluding tenant spaces.
- J. Architect will give full and prompt attention to any claims or controversies which arise during the course of construction of the Project. In the event of any proceeding to resolve any claim which involved any act or omission of the Architect, the Architect shall be present and shall participate in such proceedings.
- K. Architect will give timely notice to Owner for any meeting. Architect feels necessary in connection with this Project with utility companies or city, state or other regulatory agencies. Scheduling of such meetings is to be done by the Owner. In general, all contracts with such parties will be maintained by the Owner.
- L. The Architect shall cooperate with any consultant employed by the Owner in connection with the Project. Architect shall be entitled to rely on the completeness, accuracy and appropriateness of the Work of Owner's consultants.
- M. Architect shall assist Owner in any negotiations with governing authorities necessary to obtain temporary and permanent.
- N. Architect and its Consultants shall develop punch lists and participate with Owner in interim and final acceptance procedures.
- O. Upon completion of all construction, Architect shall deliver to Owner one (1) copy of the plans and specifications, revised to reflect all changes made during that progress of the Project and depicting the Project in "as built" condition. The cost of printing the documents referred to in this Provision is a reimbursable expense.

2.7 Project Representation Beyond Basic Services.

If Owner requests, the Architect shall provide one or more full-time project representatives to assist the Architect. Such full-time project representative shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as mutually agreed between the Owner and the Architect, at such time as such

services are requested. The duties, responsibilities and limitations of authority of such full-time project representatives shall be agreed to between Owner and Architect.

2.8 Additional Services. The following services, unless required to be performed by Architect hereunder, shall be provided when authorized as additional services by Owner in advance and in writing and shall be paid for by the Owner as hereinabove provided.

- A. Providing financial feasibility or other special studies.
- B. Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites.
- C. Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.
- D. Making investigations involving detailed appraisals and evaluations of existing facilities. Conduct surveys or inventories required in connection with construction performed by the Owner.
- E. Providing consultation concerning replacement of any work damaged by fire and other cause during construction.
- F. Providing services of professional consultants for other than those described in Section 1.6 of this Article II.
- G. Providing such other services as are authorized by Owner in writing and are not otherwise within the purview of Article II.
- H. Preparing documents of alternate, separate or sequential bids or providing extra services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase, when requested by the Owner.
- I. Making major or excessive revisions to drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given or are required by the enactment of revision of codes, laws or regulations subsequent to the preparation of such documents.

ARTICLE III

THE OWNER'S RESPONSIBILITIES.

- 3.1 Information. The Owner shall provide full information, including a complete program, regarding its requirements for the Project. The Owner shall furnish to Architect such structural, mechanical, chemical, soils and other reports and studies and results of field and laboratory tests and inspections made for or on behalf of Owner pursuant to the Contract Documents with reasonable promptness to avoid delay in the progress of the work.
- 3.2 Owner's Representative. The Owner's Representative shall act on behalf of the Owner with respect to the Project. The Owner's Representative shall not perform any design services or other services performed by an architect or engineer. The Owner's Representative shall not perform any design services or other services performed by an architect or engineer. The Owner shall examine documents, at each phase of the Work, submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's services. Any approvals given by Owner shall not relieve Architect of any of its obligations.
- 3.3 Legal and Accounting. The Owner shall furnish its own legal, accounting and insurance counseling services as may be necessary for Owner's interest in the Project and such auditing services as it may require to ascertain how or for what purposes the Contractor has used the monies paid by Owner under the Construction Contract.
- 3.4 Secrecy. Architect will retain all information belonging to Owner in strictest confidence and will neither use it nor disclose it to anyone without the express written consent of Owner. Architect shall not release any information relative to the Project for publication, advertising or any other purpose without the prior written consent of Owner, which consent shall not be unreasonably withheld.

ARTICLE IV

RIGHTS AND REMEDIES

- 4.1 Default by Architect. In the event (i) Architect fails to expeditiously perform the services required to be performed thereby delaying the progress of the Project, or (ii) Architect or any employee or agent of Architect, shall wrongfully file or record a lien against the Site or any property of Owner, or (iii) Architect is declared to be bankrupt or insolvent, an assignment for the benefit or creditors is made by Architect, the Architect shall file a voluntary petition to bankruptcy or insolvency or a receiver shall be appointed for Architect and such appointment or bankruptcy or insolvency proceeding, petition, declaration or assignment is not set aside within thirty days, or (iv) default shall be made in the observance or performance of any covenant, agreement or condition contained in agreement or condition contained in the Agreement required to be kept, performed or observed by Architect, or (v) there has been a material adverse change in the financial

condition of Architect which effects the ability of the Architect to perform its duties hereunder, or (vi) Architect, or any principal or officer or Architect, shall be indicted with the commission of a felonious crime, or (vii) Architect violates any laws, ordinances, rules, regulations or orders of any public authority in the performance of its duties hereunder; then provided the event as describe above is not cured within seven (7) days after written notice from Owner to Architect, Owner may declare Architect to be in default hereunder and exercise any remedies available to it.

- 4.2 Default by Owner. In the event Owner shall fail to perform its obligations pursuant to this Agreement after fifteen (15) days written notice from Architect to Owner, Architect may declare Owner to be in default hereunder and exercise any remedies available to it.
- 4.3 Termination by Owner due to Architect's Default. If Architect unreasonably fails to conform to the progress schedule or to supply enough properly-skilled professionals or proper materials, or if Architect violates any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is in default under the provision of this Agreement pursuant to Section 4.1 hereof, Owner may, without prejudice to any right or remedy and after giving Architect the written notice prescribed in Section 4.1 hereof, terminate the employment and take possession of all plans, specifications, drawings and other data therefore, prepared by Architect with respect to the Project by whatever method Owner may deem expedient. In such case, Architect shall not be entitle to receive any further payment until the Project is completed and Owner shall apply all sums not theretofore paid to Architect pursuant to the provisions of this Agreement toward such completion. Additionally, Owner may pursue any action available to it to obtain relief for actual damages suffered by reason of defaults, failures or breaches of Architect hereunder.
- 4.4 Termination by Architect. Should Owner default in its obligations hereunder and should it fail to cure same within the time period provided in Section 4.2 hereof. Architect may, as its sole exclusive remedy hereunder, terminate this Agreement. Upon such a termination, Architect may recover from owner full payment for all reimbursable amounts, and all other losses or damages incurred by Architect as a consequence of such default but, in no event shall said recovery be for any sum greater than that amount specified Section 1.2A hereinabove.
- 4.5 Termination by Owner without fault of Architect. Upon fifteen (15) days' written notice, Owner shall have the right to cancel and terminate this Agreement at any time whether or not a default exists hereunder, and Owner shall incur no liability to Architect or any other person by reason of such cancellation, except that if the cancellation is for no fault of Architect, Owner shall pay to Architect all sums then due to it hereunder.
- 4.6 Transfers on Termination. In the event of any termination of this Agreement, by Owner due to default, Architect shall forthwith return to the Owner all papers, materials and other properties held by the Architect for purposes of execution of the Agreement. In addition, each party will assist the other party in an orderly termination of this Agreement

and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the order, non-disruptive business continuation of each party.

ARTICLE V

INDEMNIFICATION

- 5.1 Indemnification. To the extent permitted by law, Architect, on behalf of itself and its agents (all of said parties are herein sometimes collectively referred to as the “Indemnitors”), shall fully indemnify, save and hold Owner, all entities related to Owner, all principals of Owner or its related entities, and anyone else acting for or on behalf of any of them (all of said parties are herein collectively referred to as “Indemnitees”) harmless from and against all liability, damage, loss, claims, demands, actions and expenses of any nature whatsoever incurred in good faith, including, but not limited to reasonable attorney’s fees which arise out of or are connected with, or are claimed to arise out of or be connected with: (i) any negligent act or omission or any willful misconduct by an Indemnitor in the by an Indemnitor in the performance of work to be performed hereunder; or (ii) the failure to comply with the laws, statutes, ordinances or regulations of any governmental or quasi-governmental authority; or (iii) the breach of any term or condition of this Agreement by Architect.

Without limiting the generality of the foregoing, the indemnity hereinabove set forth shall include all liability, damages, loss, claims, demands and actions on account of personal injury, death or property loss to any Indemnatee, any of Indemnatee’s employees, agents, licensees or invitees or to any other persons, whether based upon or claimed to be based upon statutory, contractual, tort, the infringement of personal or property rights, copy right, patents, trademarks of other “intangible” property right or other liability of any Indemnities or any other persons. The provisions of this indemnification article shall not be construed to indemnify any Indemnatee for any loss or damage attributable to the acts or omissions of such Indemnatee. The liability of the Architect hereunder shall not extend to the liability of Contractor or any Separate Contractor or subcontractor, their agents or employees arising pursuant to the Contract Documents.

The indemnity set forth in this Article V shall survive any termination of this Agreement, provided, however, this indemnity shall not apply to services rendered for any portion of a phase which are incomplete as of the date of termination of this Agreement.

ARTICLE VI

MISCELLANEOUS

- 6.1 Owner’s Approval. Whenever provision is made herein or in the Contract Documents for the approval or consent of Owner, or that any matter be to Owner’s satisfaction, unless specifically stated to the contrary, such approval or consent shall be made by Owner in its sole discretion and determination.

- 6.2 Singular, Plural, etc. Whenever in this Agreement the context so requires, the singular number shall include the plural number and vice versa, and any gender herein used shall be deemed to include the feminine, masculine or neuter gender, as the context so requires.
- 6.3 Personal Service Contract. This Agreement is entered into solely to provide for the design of the Project and administration of the Construction Contract and to define the rights, obligations and liabilities of the parties hereto. This Agreement, and any documents or agreement entered into in connection herewith, shall not be deemed to create any other relationship between Architect and Owner other than as expressly provided herein. Architect acknowledges that Owner is not a partner or joint venturer of Architect and that Architect is not an employee or agent of Owner.
- 6.4 Prohibition on Assignment. Architect may not transfer, hypothecate or in any way or alienate or assign its interest in this Agreement or delegate any duties to be performed by it hereunder without the advance written consent of Owner. Owner may assign its interest in this Agreement at any time, provided, however, that absent express consent in writing by Architect, such assignment, shall not release Owner from its obligation to Architect hereunder for payment of all amounts due Architect pursuant to this agreement.
- 6.5 Time. Time is of the essence of this Agreement, it being understood that any reasonable delays by the Architect in the performance of its duties hereunder may cause substantial damages to the Owner.
- 6.6 Notices. Notices, requests or demands by either party shall be in writing and shall be personally served, forwarded by expedited messenger service, or be given by registered or certified mail return receipt requested, postage prepaid, and addressed to the parties at the address heretofore set forth. All notices, requests and demands shall be deemed received upon the expiration of forty-eight (48) hours from the time of deposit in a United States post office.
- 6.7 Waiver. No waiver of any default hereunder shall be construed as a waiver of any subsequent breach or default.
- 6.8 Ownership of Documents. All drawings, specifications, surveys, results, models, plans, computer programs and data base and other work product prepared by Architect or anyone employed by Architect hereunder are and shall be the property of the Owner including all copyrights, right of reproduction and reuse and other interests relating thereto. Upon final payment to the Architect for its services pursuant to this Agreement, the Architect's name and seal and the name(s) and seal(s) of any consultants retained by Architect shall be removed from the plans and specifications and neither Architect nor its consultants shall have any responsibility for Owner's use of such plans and specifications thereafter.

The Owner and any entity affiliated with Owner may reuse all such documents and data for future work in connection with the Project and for future Projects provided the Owner shall not refer to the Architect without its consent in connection with such other projects.

- 6.9 Successors and Assigns. The Owner and the Architect each binds himself his partners, successors, assigns and legal representative to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.
- 6.10 Captions. The captions herein are for convenience only and are not construed as part of this Agreement, nor shall the same to be construed as defining or limiting in any way the scope or intent of the provisions hereof.
- 6.11 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Tennessee. Any disrupt arising from or out of this Agreement shall be resolved in a state court of competent jurisdiction.
- 6.12 General Compliance with Laws. The Architect is assumed to be familiar with and agree that at all times he agrees to observe and comply with all Federal, State and local laws, ordinances, and regulations in any manner affecting the conduct of the work and all instructions and prohibitive orders regarding the project.
- 6.13 Conflict of Interest. Architect covenants that he has no public or private interest, and shall not acquire directly or indirectly any interest which would conflict in any manner with the performance of his services. The Architect warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to an office or employee of the Government as wages, compensation, or gifts in exchange for setting as officer, agent, employee, subcontractor or consultant to the Architect in connection with any work contemplated or performed relative to this contract.
- 6.14 Covenant Against Contingent Fees. Architect warrants that he has not employed or retained any company or person other than a bona fide employee working solely for Architect, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Architect any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For breach of violation of this warranty, COUNTY shall have the right to annul this Contract without liability, or at its discretion, to deduct from the Contract price or otherwise recover, the full amount of such fee, commission percentage, brokerage fee, gift or other consideration.
- 6.15 Employment of County Workers. Architect shall not engage, on a full, part-time or other basis during the period of this Contract, any professional or technical personnel who are to have been at any time during the period of the Contract in the employ of the COUNTY.

- 6.16 Access to Records. The Architect and his subcontractors shall maintain all books, documents, papers accounting records, and other evidence pertaining to cost incurred under this Contract and make such materials and copies thereof available at their offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract for inspection by the COUNTY or by any other government entity or agency participating in the funding of this Contract, or any authorized agents thereof, copies of said records to be furnished if requested.
- 6.17 Full Agreement. Each party acknowledges its full understanding of this Agreement and that there are no verbal promises, undertaking or agreements in connection herewith and that this Agreement may be modified only by a written agreement signed by all parties hereto. All previous negotiations and agreements between the parties hereto, with respect to the transaction set forth herein, are merged in this instrument which fully and completely express the parties rights and obligations, and the covenants herein shall be binding upon and inure to the benefits of the parties hereto and their respective heirs, legal representatives, successors and assigns.
- 6.18 Partial Invalidity. If any term or provision of the Contract Documents shall be found to be illegal, unenforceable or in violation of the laws, statutes, ordinances or regulations or any public authority having jurisdiction thereof by a court of competent jurisdiction, then, notwithstanding such term or provision, the Contract Documents shall be and remain in full force and effect and such term shall be deemed stricken, provided, however, the Contract Documents shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.
- 6.19 Non-Discrimination. Architect warrants that no person on the grounds of handicapped, age, race, color, region, sex, or national origin shall be excluded from participation in, or be denied benefits of or be otherwise subjected to discrimination in the performance of this contract, or in the employment practices of the Architect. The Architect shall upon request show proof of such non-discrimination, and shall post in conspicuous places available to all employees and applicants notified.
- 6.20 Survival. The terms, provisions, representations and certification contained in this Agreement, or inferable therefrom, shall survive the completion of the Project and the payment of the remuneration hereinabove provided.
- 6.21 Insurance Requirements.
- a. The Architect shall purchase and maintain, in a company or companies authorized to do business in the State of Tennessee, such insurance as will protect the COUNTY from claims which may arise out of or result from the Architect's operations under the Contract, whether such operations are performed by himself or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts the Architect or sub-Architect may be liable.
 - b. The insurance required shall be written for not less than any limits of liability specified or required by law, whichever is greater. All policies will provide for thirty (30) days

written notice to COUNTY of cancellation of coverage provided. If policy terms and conditions do not allow for notice to COUNTY, Architect will immediately notify COUNTY and provide evidence of replacement coverage with no lapse. The Architect will maintain throughout the life of this Contract insurance, through insurers rated A- or better by A.M. Best, in the following minimum requirements:

- i) Errors and Omissions/or Professional Liability coverage with limits of \$1,000,000.00 per occurrence/\$3,000,000.00 annual aggregate, indicating if coverage is on occurrence basis or claims made.
 - ii) Commercial General Liability coverage with minimum limits of \$1,000,000.00 per occurrence bodily injury and property damage/\$1,000,000.00 personal and advertising injury/\$2,000,000.00 general aggregate coverage, \$2,000,000.00 annual aggregate products/completed operations, Shelby County Government, its elected officials, appointees and employees will be named as additional insured. The insurance shall include coverage for the following:
 - a. Premises/Operations;
 - b. XCU coverage, where applicable
 - c. Products/Completed Operations;
 - d. Contractual Liability;
 - e. Independent Contractors;
 - f. Broad Form Property Damage;
 - g. Personal Injury.
 - iii) Workers Compensation and Employers' Liability Insurance – Workers' compensation statutory limits as required by Tennessee. This policy should include Employers' Liability coverage for \$1,000,000.00 per accident. Provider waives its right of subrogation against Shelby County for any and all workers' compensation claims.
 - iv) Business Automobile Liability Insurance - minimum limit of \$1,000,000.00 each accident for property damage and personal injury. Coverage is to be provided on all owned/leased, hired and non-owned autos. Shelby County Government, its elected officials, appointees and employees will be named as additional insured.
- c. Architect shall provide COUNTY with a current Certificate of Insurance at the time of contracting and shall maintain said insurance during the entire Contract period as well as provide renewal certificates on each anniversary date. The certificate holder is to read:

Shelby County Government
Contract Administration
County Attorney's Office
160 N. Main, Suite 950
Memphis, TN 38103

- d. Upon termination or cancellation of any claims-made insurance currently in effect under this Contract, the Architect shall purchase an extended reporting endorsement and furnish evidence of same to the County.
- e. Any coverage applicable to COUNTY will apply as primary and non-contributory regardless of any insurance or self-insurance maintained by the COUNTY.
- f. If the Architect maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the Architect. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY as additional insureds.

7.1 Data Security.

Architect warrants to the COUNTY and State that it agrees to meet the spirit and intent of all compliance requirements relating to the content of data accessed. This includes but is not limited to Payment Card Industry (PCI) data, as defined by PCI Security Standard v3.1, Protected Health Information (PHI), as defined under the in Code of Federal Regulations, Title 45, Subtitle A, Subchapter C, Part 160, Subpart A, §160.103 (45 C.F.R. §160.103), and Personally Identifiable Information (PII), as defined in the National Institute of Standards and Technology Special Publication 800-122 sections 2.1 and 2.2, in electronic and/or paper format. CONTRACTOR will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance, including, but not limited to, Data Security - Vendor Acknowledgement agreement and Acceptable Use Policy, and to abide by SCG ITS security policies including, but not limited to, the SCG Network Security and Information Security policies.

Architect shall apply all vendor-issued security updates for system hardware and software components maintained by the Architect within 30 days of issuance.

Upon notification by the COUNTY, the Architect shall assure that all vulnerabilities specific to the systems maintained and identified by the COUNTY Approved Scanning Vendor (ASV), using the common vulnerability scoring system (CVSS), as not meeting compliance requirements, including but not limited to PCI Data Security Standards (DSS) and Health Insurance Portability and Accountability Act (HIPAA), are patched, updated, or otherwise modified to assure they meet said compliance requirements.

The Architect shall promptly report to Information Technology Security Officer any breaches of Shelby County Government data and will implement immediate, appropriate corrective actions to contain and prevent recurrence.

- i) **HIPAA (If Health Related) - Architect** warrants to the COUNTY and State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract. Architect warrants that it will cooperate with the COUNTY and State in the course of performance of the Contract so that all parties will be in compliance with HIPAA, including cooperation and coordination with COUNTY and State privacy officials and other compliance officers required by HIPAA and its regulations. Architect will sign any documents that are reasonably necessary to keep the State and the COUNTY in compliance with HIPAA, including, but not limited to, business associate agreements.
- ii) **PCI-DSS-Architect** warrants to the COUNTY that it is familiar with the requirements established by the Payment Card Industry Security Standards Council for PCI Data Security Standards (PCI-DSS) and will comply with all applicable PCI-DSS requirements in the course of this Contract. CONTRACTOR agrees to indemnify and hold the COUNTY, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any breach of COUNTY or COUNTY customer credit card or identity information due to the Architect's actions.
- iii) **Personally Identifiable Information (PII) - Architect** warrants to the COUNTY that it will protect any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

JUVENILE COURT OF MEMPHIS
AND SHELBY COUNTY

SHELBY COUNTY GOVERNMENT

Pamela Skelton
CAO

Mark H. Luttrell, Jr.
Mayor

APPROVED AS TO FORM
& LEGALITY:

ARCHITECT:

Contract Administration
Assistant County Attorney